Supreme Court, U. S.
FILED
APR 14 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1186

ADELICIO MOYA and MARINO MOYA individually and on behalf of all others similarly situated,
Petitioners,
v.
CHILILI COOPERATIVE ASSOCIATION, INC., DENNIS POHL, MANUAL POHL, CLOTARIO GUTIERREZ, CARMAN GALLEGOS, BEN MORA, JR., TONY MARTINEZ, SOSTEN SANCHEZ, AVARISTO GUTIERREZ, LEO DOW, BEN TORRES, FILOMENO GUTIERREZ, MOISES GALLEGOS and CHARLOTTE JEAN POHL FLYNN,
Respondents.

BRIEF OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE NEW MEXICO SUPREME COURT

WILLIAM W. ATKINSON
ATKINSON, KELSEY AND BRENNAN
1300 Bank of New Mexico Building
Albuquerque, New Mexico

RICHARD C. MINZNER
RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.
P. O. Box 1888
Albuquerque, New Mexico 87103

Counsel for Respondents

April 16, 1975

INDEX

	Page
Table of Citations	i
Statement of the Case	1
Reason for Denying the Writ	2
The Decision Below is Consistent With and Compelled by the Settled Law	
Conclusion	6

CITATIONS

CASES:	Page
Ainsa v. United States, 161 U.S. 208, 16 S.Ct. 544, 40 L.Ed. 673 (1896)	4
Armijo v. Town of Atrisco, 56 N.M. 2, 239 P.2d 535 (1951)	4
Board of Trustees of Town of Las Vegas v. Montano, 82 N.M. 340, 481 P.2d 702 (1971)	6
Board of Trustees of Town of Tome v. Sedillo, 28 N.M. 53, 210 P.102 (1922)	3
Bond v. Barela's Heirs, 229 U.S. 480, 335 S.Ct. 809, 57 L.Ed. 1292 (1913), 16 N.M. 660, 120 P.707 (1911)	2, 3, 4, 5
Flanagan v. Benvie, 58 N.M. 525, 273 P.2d 381 (1954)	5
H.N.D. Land Co. v. Suazo, 44 N.M. 547, 105 P.2d 744 (1940)	4

Kavanaugh v. Delgado, 35 N.M. 141, 290 P. 798 (1930) . . 6

Maese v. Herman, 183 U.S. 572, 22 S.Ct. 91, 46 L.Ed. 335 (1902) 4, 5

Merrifield v. Buckner, 41 N.M. 442, 70 P.2d 896 (1937) . . 4

Rio Arriba Land and Cattle Co. v. United States, 167 U.S. 298, 17 S.Ct. 875, 42 L.Ed. 175 (1897) 4

Sanchez v. Taylor, 377 F.2d 733 (10th Cir. 1967) 4

Tameling v. United States Freehold and Emigration Co., 93 U.S. 644, 23 L.Ed. 998 (1877) 4

United States v. Maxwell Land Grant Company, 121 U.S. 325, 7 S.Ct. 1015, 30 L.Ed. 949 (1887) 4

United States v. Sandoval, 167 U.S. 278, 17 S.Ct. 868, 42 L.Ed. 168 (1891) 4, 5

United States v. Santa Fe, 167 U.S. 675, 17 S.Ct. 472, 41 L.Ed. 874 (1897) 4

Yeast v. Pru, 292 F. 598 (D. N.M. 1923) 4

STATUTES:

10 Stat. 308, Ch. 103 (1854) 2

11 Stat. 374, Ch. 5 (1858) 2

§8-4-2, N.M. Stat. Ann. (1953 Comp.) 5, 6

§8-4-3, N.M. Stat. Ann. (1953 Comp.) 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1186

ADELICIO MOYA and MARINO MOYA individually and on behalf of all others similarly situated, Petitioners,	)
v.	)
CHILILI COOPERATIVE ASSOCIATION, INC., DENNIS POHL, MANUAL POHL, CLOTARIO GUTIERREZ, CARMAN GALLEGOS, BEN MORA, JR., TONY MARTINEZ, SOSTEN SANCHEZ, AVARISTO GUTIERREZ, LEO DOW, BEN TORRES, FILOMENO GUTIERREZ, MOISES GALLEGOS and CHARLOTTE JEAN POHL FLYNN, Respondents.	)

BRIEF OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE NEW MEXICO SUPREME COURT

STATEMENT OF THE CASE

The Statement of the Case by Petitioners is acceptable to Respondents except as follows:

1. Petitioners state (petition p.4, line 4, *et seq.*) that

the challenged New Mexico Statute (8-4-3 N.M. Stat. Ann.) allowed the Directors of the defendant Association to sell the Grant land. In fact that statute empowered the elected Board of Trustees of the Grant to sell the land and that Board sold it to the defendant Association.

2. While the defendant Association was established "to administer, operate and maintain any common lands" as stated in the petition (p.4, line 20, *et. seq.*) it also has the specific power to sell the land.

3. Petitioners' claim to vested rights based on the Congressional Acts of 1854 and 1858 (pp.4-5) was raised for the first time in the New Mexico Supreme Court. The petition (p.5, line 8, *et. seq.*) may imply the contrary. The complaints in this case claimed vested rights based on the Treaty of Guadalupe-Hidalgo.

REASON FOR DENYING THE WRIT

THE DECISION BELOW IS CONSISTENT WITH AND COMPELLED BY THE SETTLED LAW

Petitioners have attempted to distinguish this case from the entire body of law governing community land grants on two bases: the Chilili Grant was unincorporated when patented, and the Chilili Grant was confirmed prior to 1891. This Court's decision in *Bond v. Barela's Heirs,* 229 U.S. 480, 335 S.Ct. 809, 57 L.Ed. 1292 (1913) (affirming 16 N.M. 660, 120 P.707 (1911)), involving the Town of Tome Land Grant disposes of both distinctions.

Congress confirmed the Tome Grant by the same Act of December 22, 1858 (11 Stat. 374, Ch. 5) and pursuant to the same Act of July 22, 1854 (10 Stat. 308, Ch. 103) which

are involved in this case. After the 1858 confirmation, patent issued to Tome in 1871. *Bond*, 229 U.S. at 493. Petitioners' attempt to distinguish *Bond* on the ground that it involved a confirmation and patent to an incorporated Town is factually incorrect. Although Tome was incorporated by the time of the *Bond* decision (229 U.S. at 489) and although the opinion does not mention the date of incorporation, it is clear that Tome was incorporated no earlier than 1891, at least twenty years after the patent issued. *Board of Trustees of Town of Tome v. Sedillo*, 28 N.M. 53, 54, 210 P.102 (1922). The prior unincorporated status of the Town of Tome is implied in the New Mexico Supreme Court decision in *Bond* which states:

> "[The confirmation] thus partook of the nature of an original grant *to that town and to its successors, the present defendant corporation.* The grant was burdened with no trust in favor of plaintiffs as successors in title to certain of the original allottees . . ." 16 N.M. at 685. (Emphasis added.)

Therefore, the holding by this Court in *Bond* is dispositive.

> "When patent to the entire grant issued to the Town of Tome, title to all the unallotted land passed from the United States to the Town, unburdened with any trust for heirs or grantees of persons named in the original petition and decree." 229 U.S. at 493.

The question of the effect of incorporation was addressed in *Bond*. If the Court in that case had decided that constitutionally protected rights had been conferred on individuals by the Act of 1858 or the patent to the Town, it would have had to deal with the issue of the effect of the subsequent incorporation of the Town on these rights. The appellants in that case argued that issue in their briefs. (See Summaries of Appellants' Arguments, 57 L.Ed. at

1293, and 16 N.M. at 662). The fact that neither the New Mexico Supreme Court nor this Court mentioned this issue in their opinions makes clear that the above quoted language of both Courts is holding and not dicta. No individual rights were conferred by the pre-incorporation confirmation or patent; the decision does not turn on the subsequent incorporation of Tome.

This holding in *Bond* is consistent with all other cases involving Spanish and Mexican Land Grants, regardless of the date of confirmation. *United States v. Santa Fe*, 167 U.S. 675, 17 S.Ct. 472, 41 L.Ed. 874 (1897); *United States v. Sandoval*, 167 U.S. 278, 17 S.Ct. 868, 42 L.Ed. 168 (1891), *Rio Arriba Land and Cattle Co. v. United States*, 167 U.S. 298, 17 S.Ct. 875, 42 L.Ed. 175 (1897); *Yeast v. Pru*, 292 F. 598 (D. N.M. 1923); *Armijo v. Town of Atrisco*, 56 N.M. 2, 239 P.2d 535 (1951); *Merrifield v. Buckner*, 41 N.M. 442, 70 P.2d 896 (1937), all citing additional cases.

Respondents submit that the discussion in *United States v. Sandoval* quoted by petitioners concerning the differences between the 1851 statute and the 1891 statute is irrelevant here. Neither that case nor *Ainsa v. United States*, 161 U.S. 208, 16 S.Ct. 544, 40 L.Ed. 673 (1896) mentioned therein suggests that a Court can rely upon these differences to determine that a patent issued by the political arms of government was intended to create rights in persons other than the confirmee. In fact there is strong language in both cases to the contrary. See also *Tameling v. United States Freehold and Emigration Co.*, 93 U.S. 644, 23 L.Ed. 998 (1877), *United States v. Maxwell Land Grant Company*, 121 U.S. 325, 7 S.Ct. 1015, 30 L.Ed. 949 (1887), *Sanchez v. Taylor*, 377 F.2d 733 (10th Cir. 1967), *Maese v. Herman*, 183 U.S. 572, 22 S.Ct. 91, 46 L.Ed. 335 (1902), *H.N.D. Land Co. v. Suazo*, 44 N.M. 547, 105 P.2d 744 (1940).

However, even if *Sandoval* (which involved an 1891 confirmation) carries the implication with respect to earlier confirmations that petitioners read into it, no case has ever followed that implication and this Court subsequently rejected it in *Bond v. Barela's Heirs, supra*, both by its holding, as noted above, and by its citation as controlling of cases involving 1891 confirmations, 229 U.S. at 492. Finally, of course, the discussion in *Sandoval* does not even allude to the 1854 and 1858 statutes involved here; petitioners' argument with respect to these statutes is merely by analogy to the 1851 statute which is addressed therein. Therefore, petitioners' distinction based on the differences between the confirmatory acts must fail.

Further petitioners' distinction between patents to incorporated and unincorporated towns is clearly without merit, even absent the decision in *Bond v. Barela's Heirs, supra.* First, *Maese v. Herman*, 183 U.S. 572, 22 S.Ct. 91, 46 L.Ed. 335 (1902) ordered a patent issued to the Town of Las Vegas, which was not only unincorporated, but unlike the Town of Chilili, was not even statutorily recognized. The opinion did not deal with issuing a patent to the individuals of the Town of Las Vegas as petitioners contend. Secondly, *Flanagan v. Benvie*, 58 N.M. 525, 273 P.2d 381 (1954) holds that unincorporated associations cannot hold title to real estate because they generally have no legal existence. The authorities relied on in that case clearly imply that if such an association is statutorily recognized, it can hold title. (58 N.M. at 529.) Therefore, under *Flanagan*, it is the question of legal existence, not incorporation, which is critical. The statute establishing the Board of Trustees of the Town of Chilili clearly envisioned the Board's taking title since one of its duties was to issue deeds. See 8-4-2, N.M. Stat. Ann. (1953) (Repl. Vol. 2, pt. 2, 1974):

"It shall be the duty of said Armenta or his successors in office to extend title deeds . . ." (L. 1876, C.51 §2)

Further, the New Mexico Supreme Court has held that under New Mexico law the holding and management of real estate is the principal, if not only, function of such an organization. *Board of Trustees of Town of Las Vegas v. Montano*, 82 N.M. 340, 343, 481 P.2d 702 (1971); *Kavanaugh v. Delgado*, 35 N.M. 141, 145, 290 P.798 (1930). Finally, the power of such an organization to hold title surely presents no Federal constitutional issue.

CONCLUSION

For the above reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

WILLIAM W. ATKINSON
ATKINSON, KELSEY AND BRENNAN
1300 Bank of New Mexico Building
Albuquerque, New Mexico

RICHARD C. MINZNER
RODEY, DICKASON, SLOAN, AKIN
& ROBB, P.A.
P. O. Box 1888
Albuquerque, New Mexico 87103

Counsel for Respondents

April 16, 1975